

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300

WASHINGTON, DC 20007-5116

TELEPHONE (202) 424-7500

FACSIMILE (202) 424-7645

WWW.SWIDLAW.COM

HARRY N. MALONE III  
DIRECT DIAL (202) 424-7705  
HNMALONE@SWIDLAW.COM

NEW YORK OFFICE  
405 LEXINGTON AVENUE  
NEW YORK, NY 10174  
(212) 758-9500 FAX (212) 758-9526

October 28, 2004

**EX PARTE**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W., TW-A325  
Washington, D.C. 20554

Re: Unbundled Access to Network Elements; WC Docket No. 04-313

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; CC Docket No. 01-338

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission Rules, this letter is to provide notice in the above-captioned proceedings of an ex parte meeting. On October 27, 2004, John Tassone, of ACN Communication Services, Inc., and myself met with the Matthew Brill, Legal Advisor to Commissioner Abernathy. At the meeting we discussed the necessity of preserving unbundled local switching in certain markets, in accordance with the attached talking points.

Pursuant to the Commission's rules, this letter is being filed electronically in the above captioned dockets.

Sincerely,

/s/ Harry N. Malone

Harry N. Malone  
Counsel to ACN Communication Services, Inc.

Enclosure

cc: Matthew Brill, FCC  
John Tassone, ACN

**ACN COMMUNICATION SERVICES, INC.**  
**MEETING WITH MATTHEW BRILL**  
**OCTOBER 27, 2004**

1. ACN background as residential service provider
2. ACN needs three things to continue to provide service to predominately residential customers:
  - a. Differentiation between CLEC's who provide service to residential versus commercial customers;
  - b. Continuation of UNE-P to enable continued service to residential and small business customers;
  - c. Speed in establishing permanent rules to end this period of uncertainty.
3. Current alternatives to UNE-P are not cost effective, therefore, transition time is needed.
  - a. Resale
  - b. Self-provisioned, facility based services
  - c. 3<sup>rd</sup> Party wholesale facility based services
  - d. "Commercial" agreements
  - e. Alternative technologies
4. ILEC's claims of loss due to UNE-P are overstated and more than compensated by gains in long distance:
  - a. Intermodal alternatives are not comparable to wireline service.
  - b. Financial harm from UNE-P is overstated.
  - c. Compensation from long distance outweighs any shortfall in profits from UNE-P.
5. Adopt a line density threshold that on a CLEC by CLEC basis takes into account:
  - a. Scale economies
  - b. Sunk costs
  - c. First mover advantages